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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,777	11/26/2003	Bruce Kevin Wagoner	4237-101	9677

23448 7590 02/08/2006

INTELLECTUAL PROPERTY / TECHNOLOGY LAW
PO BOX 14329
RESEARCH TRIANGLE PARK, NC 27709

EXAMINER

LEITH, PATRICIA A

ART UNIT	PAPER NUMBER
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1655

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/723,777

Applicant(s)

WAGONER, BRUCE KEVIN

Examiner

Patricia Leith

Art Unit

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/01/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 1-39 are pending in the application and were examined on their merits.

Election/Restrictions

The election of species requirement presented on 11/17/05 is hereby removed. It has been found that certain embodiments of claims 1-39 incorporate all of the species and therefore there is no burden of search. Applicant's arguments are thus moot in light of the removal of the requirement.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 7-10 and 35-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Huard et al. (US 6,485,733 B1).

Huard et al. (US 6,485,733 B1) disclosed that the ingredients of Vaseline™ Intensive Care Extra Strength Lotion included, *inter alia*, sunflower seed oil, soya sterol, glyceryl stearate, stearic acid, triethanolamine, glycerine, water, lecithin, tocopherol acetate, retinyl palmitate, disodium EDTA and urea (see col. 18, lines 51-63).

It is noted that *Helianthus annuus* is the botanical name for sunflower.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huard et al. (US 6,485,733 B1) in view of Quan et al. (US 6,180,138³ B1) in view of Durr et al. (US 5,997,889) in view of Hill et al. (US 4,233,295) and in view of McNulty et al. (US 2005/0048105 A1).

The teachings of Huard et al. were discussed *supra*.

Huard et al. did not specifically teach the incorporation of shea butter, ammonium lactate, butylated hydroxytoluene or sodium polyacrylate into the VaselineTM composition.

Quan et al. (US 6,180,138³ B1) teaches that studies indicated that addition of ammonium lactate to lotions had proven moisturizing activity (col. 3, line 64- col.4, line 17).

Durr et al. (US 5,997,889) disclosed that shea butter may be added to a lotion to improve its moisturizing ability (see Abstract for example).

Hill et al. (US 4,233,295) teaches that butylated hydroxytoluene, an antioxidant, is advantageous to incorporate into creams, lotions or ointments in order to preserve the active ingredients therein (see col. 6, lines 23-26).

McNulty et al. (US 2005/0048105 A1) teaches that sodium polyacrylate is a known thickening agent for creams and lotions[0069].

One of ordinary skill in the art would have been motivated to combine ammonium lactate and shea butter into the VaselineTM composition because they are ingredients well known to improve moisture to the skin. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the

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instant ingredients for their known benefit since each is well known in the art for lending moisture protection to the skin. This rejection is based on the well established proposition of patent law that no invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients, *In re Sussman*, 1943 C.D. 518. Accordingly, the instant claims, in the range of proportions where no unexpected results are observed, would have been obvious to one of ordinary skill having the above cited references before him.

One of ordinary skill in the art would have been motivated to incorporate butylated hydroxytoluene to the Vaseline TM composition in order to preserve the active ingredients therein. It was clear from the prior art that butylated hydroxytoluene was used as an antioxidant in creams and lotions. Thus, the ordinary artisan would have had a reasonable expectation that the addition of this ingredient would have afforded the Vaseline TM lotion a longer shelf-life.

One of ordinary skill in the art would have been motivated to add sodium polyacrylate to the Vaseline TM composition, or alternatively, to substitute sodium polyacrylate for another thickener in Vaseline TM such as methylparaben because the addition of thickening agents to lotions imparts a thicker viscosity to the lotion which has a pleasant consistency and further is easy to administer to the skin and these thickening

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agents are considered functional equivalents as they perform the same function; thickening the lotion. The choice of thickeners is considered a matter of judicious selection on the part of the ordinary artisan, and no unexpected results can be found by use of sodium polyacrylate, a known cosmetic thickening agent, over thickening agents such as methylparaben which was also a well known thickening agent.

It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233; 235 (CCPA 1955). see MPEP § 2144.05 part II A. It would have been obvious to one of ordinary skill in the art at the time Applicants' invention was made to determine all operable and optimal concentrations of components because concentration is an art-recognized result-effective variable which would have been routinely determined and optimized in the cosmetic and pharmaceutical arts. One of ordinary skill in the art would have been motivated to have modified the proportions of ingredients in the lotion in order to enable the content of the preparation to be matched with the demands and needs of individuals which needed treatment (e.g., regular strength –vs- extra strength). Such variations in amounts of cosmetically/ pharmaceutically active ingredients is considered merely optimization of result effective variables, conventional practice in the art of pharmacology.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

No Claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia Leith whose telephone number is (571) 272-0968. The examiner can normally be reached on Monday - Thursday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia Leith

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Primary Examiner
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2/04/06

A handwritten signature in black ink, appearing to read "Patricia H.", with a long, sweeping horizontal line extending from the end of the signature.